

WORKERS' COMPENSATION SHOP TALK

QUESTION: Is an oral agreement to settle a workers' compensation case binding on an employer before formal settlement documents are signed and filed with the Industrial Commission?

In most civil cases, once the parties reach an agreement to settle a case, that agreement is deemed by courts to be enforceable. In the event one of the parties elects later to renege on the agreement or refuse to honor its terms, the other party is entitled to file a *Motion to Enforce* the settlement agreement with the trial court, who presumably will issue an order that the renegeing party comply. Workers' compensation settlements are different, as confirmed recently by the Ohio Court of Appeals, Fifth Appellate District in a case involving a workers' compensation claim with an oral agreement to a settle, followed by a renunciation of that agreement by the employer, and whether a *Motion to Enforce* filed by the claimant in that case constituted "frivolous conduct."

Waller v. Menorah Park Ctr. For Senior Living, 2019-Ohio-671, originated when a claimant slipped in a tub while cleaning it and was injured. A workers' compensation claim was filed, which was allowed for a number of contusions and soft tissue sprains. Later, the claimant filed motions seeking the additional allowance of the claim for several much more serious conditions, including a chondral injury to the right knee. Most of these additional conditions were denied administratively in 2014, prompting an appeal to the Stark County Court of Common Pleas pursuant to R.C. 4123.512. After dismissing the appeal once without prejudice and refiling it, an agreement to settle the claim was reached and on April 20, 2016, the trial court issued an order noting that "[a] final agreed upon judgment entry approved by counsel for all parties shall be filed with the Court within **30 days** of the filing of the written entry." Settlement documents were drafted and circulated, and the claimant alleged that she signed the documents and returned them to the employer on December 4, 2017. On December 20, 2017, claimant's counsel was informed by counsel for the employer that it "would no longer honor the parties' settlement agreement." (The basis for this refusal is not in the record, although it is likely due to the fact that the settlement had been pending for nearly two years.) The claimant filed a motion with the trial court to enforce the settlement agreement, which was opposed by the employer, who argued that no settlement of a workers' compensation claim can be final without a fully executed settlement agreement filed with the Industrial Commission, who also required a consideration period of 30 days. The employer filed its own motion and asked the court to declare the *Motion to Enforce* to be frivolous, and to award it attorneys fees. The trial court agreed, finding no basis for the *Motion to Enforce* and awarding the employer \$1,277.50 in fees. The claimant appealed this decision to the Fifth Appellate District as of right.

The Fifth District affirmed, finding that R.C. 4123.512 is the only basis for an administrative appeal from an Industrial Commission decision, and R.C. 4123.65 states specifically that no

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settlement shall be binding until a final settlement agreement is signed by the parties and filed with the Industrial Commission and thirty days have passed. This issue had previously been considered and adjudicated by the Supreme Court of Ohio in *Gibson v. Meadow Gold Dairy*, 88 Ohio St.3d 201 (2000), a decision that held that when a claimant changed his mind and withdrew consent to settle his claim, and refused to execute the settlement documents, the trial court erred when it dismissed his appeal with prejudice because “the oral settlement agreement never legally bound [the claimant.]” This case, which established that there was no legal basis for a motion to enforce, was cited in the employer’s brief and the claimant had ample notice of it, but elected not to withdraw her motion before a hearing. It is every attorney’s duty to know the law that applies to his or her case, and therefore the “frivolous conduct” finding and award of attorney’s fees was warranted.

For good measure, the appellate court in *Waller* similarly found the appeal of the trial court’s decision to be “frivolous,” and awarded the employer’s attorneys an additional \$1,358.75 in fees incurred as a result of defending the appeal. If nothing else is learned from *Waller*, the fact that “oral” agreements to settle workers’ compensation claims, and likely even the execution of hand-written “half sheets” after a mediation or settlement conference, are not enforceable by motion. Those who seek such enforcement do so at their own peril.

If you would like to submit a question to Shop Talk, or would like to discuss this or any other workers’ compensation issues, please feel free to contact me.

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